Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

RUFUS TERREL DAVIS,

Petitioner,

v.

CITY OF EUCLID,

Respondent.

On Petition For Writ Of Certiorari To The Eighth District Court Of Appeals Cuyahoga County, Ohio

PETITION FOR WRIT OF CERTIORARI

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29 pp

QUESTIONS PRESENTED FOR REVIEW

I

Where the State by legislation classifies the offense of possession of less than one hundred (100) grams as being punishable as a minor misdemeanor, for which only a fine can be levied, can a municipality by ordinance reclassify the identical offense as a first degree misdemeanor and provide more severe sanctions – including harsh penal sanctions?

II

Were the due process and the equal protection clauses violated when, despite the statutory prescribed penalties, a city within the State aggravates the offense and thus prosecutes and punishes an individual more severely than would have been possible under the State statute?

TABLE OF CONTENTS

Page

Questions Presented For Review i

Table of Authorities iv

Opinions Below 1

Statement Of The Grounds On Which The Jurisdiction Of This Court Is Invoked 1

Constitutional And Statutory Provisions 2

Statement Of The Case 4

Arguments Relied On For Allowance of Writ 8

Argument No. I:

Where A State Legislature Enacts A Statute That Expressly Designates A Particular Offense (Here Possession Of Less Than 100 Grams Of Marijuana) As A Minor Misdemeanor For Which Only A Fine Can Be Imposed, A Municipality (Within That State) Violates The Equal Protection Clause When It Classifies The Identical Offense As A First Degree Misdemeanor – A Much More Serious Offense, And Punishes An Accused Accordingly 10

Argument No. II:

Given An Ordinance Supposedly Violated Is Unconstitutional, It Follows Any Sentence Imposed In The Wake Of An Alleged Violation Thereof Against An Accused Must Be Regarded As Illegal And Voided 13

Conclusion 15

TABLE OF CONTENTS – Continued

Page

Appendix "A" – Journal Entry And Opinion Of The Eighth District Court Of Appeals.....App. 1

Appendix "B" – Journal Entry Of The Euclid Municipal Court.....App. 7

Appendix "C" – Entry Of The Supreme Court of Ohio.....App. 9

TABLE OF AUTHORITIES

Page

Cases

City of Cleveland v. Betts, 168 Ohio St. 386 (1958) ..7, 14

Niles v. Howard, 12 Ohio St. 3d 162 (1984) 7, 13

Struthers v. Sokol, 108 Ohio St. 263 (1923) 7

Rules, Statutes and Other Authorities

Section 607.03, *Codified Cleveland Ordinances* 4, 12

Section 513.03(A)(C)(2), *Codified Ordinance of the City of Euclid, Ohio* 3, 5, 8

Section 3, Article 18, *Constitution of the State of Ohio* 2, 14

Revised Code of Ohio, §2925.11(C)(3)(a) and (b) 3, 5, 6, 8, 14

Title 28 U.S.C. §1257(3) 1

Amendment Six, *United States Constitution*..... 2

Amendment Fourteen, *United States Constitution* 2

To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioner, Rufus Terrel Davis, respectfully prays that a Writ of Certiorari issue to review the judgment of the Eighth District Court of Appeals, which judgment became final on January 16, 2002, when the Supreme Court of Ohio denied further appellate review.

OPINIONS BELOW

The Opinion of the Ohio Court of Appeals, against which this *Petition* is directed, was issued on September 17, 2001. This Opinion is designated **Appendix "A," at App. 1 to App. 6**, in the Appendix to *Petition*. **Appendix "B" at App. 7**, is the designation given the trial Court's Journal Entry centralized in the various appeals through the Ohio courts. The Entry of the Ohio Supreme Court denying further appellate review was entered on January 16, 2002, the critical date herein. It is designated herein as **Appendix "C," at App. 9**.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the Supreme Court of Ohio, as indicated above, was entered on January 16, 2002. The jurisdiction of this Court is invoked under Title 28 U.S.C. §1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principal provisions of the United States Constitution involved in this case are the Sixth Amendment, and the equal protection and due process clauses of the Fourteenth Amendment. Also involved in this case are segments of the Ohio Constitution and various State and City legislative enactments. The pertinent texts of each of these are set forth below:

1. **Amendment Six, United States Constitution**:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . [and] to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

2. **Amendment Fourteen, Section I, United States Constitution**:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3. **Section 3, Article 18, Constitution of the State of Ohio**, provides:

> Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police,

sanitary and other similar regulations, as are not in conflict with general laws.

4. **R.C. of Ohio, §2925.11(C)(3)(a) and (b)**, provides:

No person shall knowingly obtain, possess, or use a controlled substance.

* * *

(C) Whoever violates division (A) of this section is guilty of one of the following:

* * *

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), or (f) of this section, *possession of marihuana is a minor misdemeanor.*

(b) If the amount of the drug involved equals or exceeds one hundred grams but does not exceed two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.

5. **Section 513.03(A)(C)(2), Codified Ordinance of the City of Euclid, Ohio** provides:

(a) No person shall knowingly obtain, possess or use a controlled substance.

* * *

(c) Whoever violates subsection (a) hereof is guilty of one of the following, provided the drug involved is not cocaine or a compound, mixture, preparation or substance containing cocaine and provided the drug involved is not L.S.D. or heroin:

* * *

(2) If the drug involved in the violation is marihuana, whoever violates subsection (a) hereof is guilty of possession of marihuana, a misdemeanor of the first degree. The penalty shall be as provided in Section 599.02. (Ord. 182-1998. Passed 9-8-98.)

6. **Section 607.03, Codified Cleveland Ordinances** provide:

(a) No person shall knowingly obtain, possess, or use a controlled substance.

* * *

(2) If the drug involved is marihuana and the amount is less than the bulk amount as defined in Section 607.01, drug abuse is a misdemeanor of the first degree, *unless the amount of marihuana involved is less than 100 grams . . . in which case drug abuse is a minor misdemeanor*. (Emphasis supplied.)

STATEMENT OF THE CASE

The critical facts here are clear beyond dispute, indeed they are actually indisputable. Simply put, the summary of the relevant facts as set forth in the Opinion of the Ohio Court of Appeals cannot be improved on. As

the Court set forth, what occurred in this case is easily put:

> Appellant, Rufus Terrel Davis, appeals from his sentence for the possession of marijuana. Mr. Davis claims that the City of Euclid unconstitutionally elevated the offense from a minor misdemeanor under R.C. 2925.11[C][3][a] to a first degree misdemeanor under the municipal ordinance. We find no merit to this contention and affirm.
>
> On December 9, [2000], Mr. Davis was stopped for a traffic violation and was found to be in possession of less than . . . [100] grams of marijuana in violation of Section 513.03(A)(C)(2) of the Codified Ordinances of the City of Euclid.
>
> On January 25, 2001, Mr. Davis was convicted of Drug Abuse in violation of Section 513.03(A)(C)(2), a first degree misdemeanor. Mr. Davis was sentenced to a fine of $300, court costs, one year of active probation, and thirty days in jail which were suspended on the condition that he perform forty hours of community service and undergo a drug assessment.
>
> On January 31, 2001, Mr. Davis filed a Motion To Correct Illegal Sentence arguing that the fine of $300 imposed by the City exceeds the monetary maximum imposed by law. Specifically, Mr. Davis argued that the City illegally elevated the offense from a minor misdemeanor under R.C. 2925.11[C][3][a], which prescribes that a fine may not exceed $100, to a first degree misdemeanor under the municipal ordinance, which prescribes a fine of $300. On February 13, 2001, Mr. Davis's motion to correct was denied.

Appendix "A," Journal Entry and Opinion, at App. 2-App. 3.

The petitioner assigned two errors in the Court of Appeals. Precisely stated the contentions there made were:

> I. Given R.C. of Ohio §2925.11(C)(3)(a), the sentence imposed herein against the appellant must be regarded as illegal.
>
> II. The appellant was denied equal protection of the law in the wake of the Court regarding what the State proclaimed to be a minor misdemeanor as a first degree misdemeanor and prosecuting and punishing him on that basis.

The Court of Appeals, as shown in segments of its Opinion quoted above, in resolving these issues recognized what we deem to be the most significant facts here. These relevant facts show that the City ordinance, making possession of the quantity of marijuana involved in this case a first degree misdemeanor, used language that was identical to that in R.C. of Ohio, §2925[C][3][a]. The State legislature classified this precise offense as a minor misdemeanor. Because this was so, in our judgment, the City was barred from enhancing what the State legislature had classified as a minor misdemeanor to the most serious misdemeanor allowable under Ohio law. (**Id. at App. 3.**) Our position was the equal protection clause of the Constitution barred this being done.

Distilled then, despite the equal protection clause of the United States Constitution, despite Section 3, Article 18 of the Ohio Constitution, and despite petitioner's contention that R.C. of Ohio, §2925.11[C][3][a], was a "law of

general nature, and as such fell within its ambit and for that reason could not be modified by municipal law," the Court of Appeals saw it otherwise. Indeed, according to their Opinion, our argument was without merit. In support of this thesis the Court cited and relied on two cases decided by our state Supreme Court.[1]

Granted the Ohio Supreme Court had in fact taken the position indicated. And as was predicted there was a great likelihood that position would be maintained by that Court – as it was. But surely this does not forever end or settle the matter. This follows because there is the question of the equal protection provided by the United States Constitution, an issue over which this Court has ultimate oversight. Indeed, no one can say with impunity what this Court would do when asked if the identical conduct can be punished differently within a State depending only on where in the State (or in this instance in the county) the alleged offense occurs. This problem becomes even more manifest once it is realized that if a State's legislature specifically regards certain conduct as the commission of a felony, a city cannot make such conduct less serious. Cf., **City of Cleveland v. Betts, 168 Ohio St. 386 (1958)**. Why then should the reverse be any different?

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[1] **Niles v. Howard, 12 Ohio St. 3d 162, 165 (1984)** and **Struthers v. Sokol, 108 Ohio St. 263 (1923)**. Here, of course, the dissent in **Niles v. Ohio** really makes all the points counsel has sought to make.

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

The issue here is clear cut. Simply put, given that the State of Ohio, by statute, classified the possession of less than 100 grams of marijuana as a minor misdemeanor, the question then is: can the City of Euclid nonetheless reclassify this offense (simply because it was committed in Euclid, Ohio) as a first degree misdemeanor? In our judgment, the State by enacting R.C. of Ohio, §2925.11(C)(3)(a) and (b), and classifying possession of less than 100 grams of marijuana as a misdemeanor, imposed a pre-empted classification on all the judicial jurisdictions in the State.

Also, it is significant that it is possible for a person to be charged in Euclid, Ohio under the state statute. To the extent Petitioner was charged and punished more severely for the identical conduct simply because the charge was brought under the City Ordinance, it follows from the disparate punishment provided for as between the statute and the ordinance, that what surfaces is an issue that cannot be rotely resolved as was done here. With this being so, it is clear petitioner has been denied "equal protection of the law". This follows because based solely on the prosecutor's decision to charge petitioner under the City ordinance, to which we have made reference (*i.e.*, Codified Ordinance of City of Euclid, Ohio, §513.03[A][C][2]), petitioner was judged and sentenced more severely than the State decreed should be the case for his offense. In our view the Constitution stands as a barrier against things like this happening

Simply put then, if nothing else the position taken by the Euclid Municipal Court (**Appendix "B"**, ***infra***, **at App.**

7 to App. 8) and the Ohio Court of Appeals (**Appendix "A", *infra*, at App. 4**), were both unduly cramped. This follows for the same reason that will be apparent from the City's response pleadings. In short the City will not explain to us how or why, in spite of the equal protection clause, the legislation here being centralized can survive constitutional challenge. The City has simply failed to recognize it is not enough that the Ohio Supreme Court, in the cases they relied on, approved the ordinances in those cases. The issue as postured here required the Courts below to reckon with the "equal protection clause" of the Fourteenth Amendment, and they failed to heed this requirement.

What emerges, in the wake of the facts here, is a non-frivolous question. This question simply asks: when one is arrested for the possession of less than 100 grams of marijuana found in his possession, can he be prosecuted for, either, a minor misdemeanor or a first degree misdemeanor, depending on what side of the street the arrest occurs?

In our judgment, as argued below, the prosecution and the sentencing of our petitioner as a first degree misdemeanant, violated the due process rights guaranteed those arrested in Ohio. It also violated the letter, the spirit and purpose of the equal protection clause of the United States Constitution. This follows because clearly it makes no sense to say that despite a State legislative declaration as to the gravity of an offense, over which a City has concurrent jurisdiction, a City within that State

has the prerogative to upgrade the severity of the offense and punish an accused accordingly.

ARGUMENT NO. I

WHERE A STATE LEGISLATURE ENACTS A STATUTE THAT EXPRESSLY DESIGNATES A PARTICULAR OFFENSE (HERE POSSESSION OF LESS THAN 100 GRAMS OF MARIJUANA) AS A MINOR MISDEMEANOR FOR WHICH ONLY A FINE CAN BE IMPOSED, A MUNICIPALITY (WITHIN THAT STATE)VIOLATES THE EQUAL PROTECTION CLAUSE WHEN IT CLASSIFIES THE IDENTICAL OFFENSE AS A FIRST DEGREE MISDEMEANOR – A MUCH MORE SERIOUS OFFENSE, AND PUNISHES AN ACCUSED ACCORDINGLY.

The most obvious aspect of the Euclid City Ordinance involved in this case is that its excessively enhanced penalties, which include a penal sanction, conflicts with the will of our State legislature. It also exposes any one found in possession of the quantity of marijuana involved in this case to the happenstance of being prosecuted and punished more severely than would even be possible if they had been arrested for the identical offense in certain other cities in the same county and State.

What must not be overlooked here is that when issues of statewide concern fall within the province of the State legislature, and when the legislature occupies the field (as was done here) and establishes what the law shall be, whatever the resulting enactment, it is literally

preemptive. The point here being that the Ohio Legislature provided anyone convicted in Ohio for the possession of less than one hundred (100) grams of marijuana would only be prosecuted for a minor misdemeanor offense. The effect of this legislation is that lesser governing bodies within the State, *e.g.*, cities in Ohio (like Euclid), are prohibited from enacting ordinances that contravene any of the critical components of the legislative enactment.

Here it should be noted that one scholar, in dealing with this issue in the context of a State motor vehicle law, wrote:

> as a general rule . . . a state motor vehicle code or law supersedes or prevails over all inconsistent municipal regulations. Accordingly, a municipal regulation conflicting with the same motor vehicle law is void and of no effect.

McQuillin Municipal Corporations, §24.620 (3d ed. 1999). This thesis truly makes our point. For if it were otherwise, then the City within the State could make more serious even State defined minor traffic offenses.

In the case here, for which review is being sought, we have a specific State law that addresses the precise issue with which we are here concerned. And, we have a City Ordinance that seeks to likewise criminalize the same, indeed the identical, conduct. The difference being, the city of Euclid, Ohio would punish identical conduct more severely if it is detected as having occurred within its boundaries than would be the case if it had occurred in the neighboring city of Cleveland. The position here being taken is that inasmuch as the State statute declares

the offense here involved to be a minor misdemeanor, whereas the City Ordinance makes it a first degree misdemeanor, it follows they are in an irreconcilable conflict. This conflict is magnified by the fact that this city Ordinance is also in conflict with petitioner's fourteenth amendment entitlement to being equally protected by the law. And, this is so no matter where in the State, or the county for that matter, he happens to have been arrested. This fact is significantly accentuated even more so when it is realized the city of Cleveland, Ohio and the city of Euclid, Ohio are both in the same county and have a common boundary of several miles.

So postured, it is indeed worth repeating: had this offense occurred in the city of Cleveland, it would have been a minor misdemeanor (**Cleveland Codified Ordinances, §607.03**). Again, this Ordinance provides, as does the State statute, that:

* * *

> If the drug involved is marihuana and the amount is less than the bulk amount as defined in Section 607.01, drug abuse is a misdemeanor of the first degree, *unless* the amount of marihuana involved is less than 100 grams . . . in which case drug abuse is a minor misdemeanor. (Emphasis supplied.)

With this being so, it inexorably follows the position here taken is that the Euclid ordinance conflicts with the preemptive State statute. Also, to the extent that petitioner is exposed to being punished more severely because he was stopped for a traffic offense in Euclid, Ohio (which led to the discovery of the marijuana), rather than elsewhere in the State makes it clear he is being

denied equal protection of the law. Indeed, the gross disparity with which we are here concerned is amplified by the fact that certain neighboring cities in the same county as is Euclid, including Cleveland, Ohio, regard the possession of less than 100 grams of marijuana to be a minor misdemeanor. The effect of this is that along the boundary between Cleveland, Ohio and Euclid, Ohio (both in the same county), the side of the street one is arrested on determines the possible penalties they face.

Based on these facts alone the argument that petitioner was denied equal protection of the law is really irrepressible.

ARGUMENT NO. II

GIVEN AN ORDINANCE SUPPOSEDLY VIOLATED IS UNCONSTITUTIONAL, IT FOLLOWS ANY SENTENCE IMPOSED IN THE WAKE OF AN ALLEGED VIOLATION THEREOF AGAINST AN ACCUSED MUST BE REGARDED AS ILLEGAL AND VOIDED.

We readily concede the lower Ohio Courts may very well have regarded themselves as being bound by **Niles v. Howard, 12 Ohio St. 3d 162 (1984)**. However, it seems clear to counsel the Ohio Supreme Court should have revisited the issue here raised to the end that it could have voiced the position that ultimately must be taken. Simply put, that position is that the petitioner's due process and equal protection rights were violated in the wake of the sentence imposed. This follows because, as was argued to the trial Court in the *Motion To Correct Illegal Sentence*, the State legislation preemptively decreed that those who possess less than 100 grams of marijuana

should only be prosecuted for a minor misdemeanor offense (**R.C. of Ohio, §2925.11[C][3][a]**). Again, the city of Euclid's statute makes the identical possession charge in this case, which charge is regarded by the State statute as a minor misdemeanor, a first degree misdemeanor. This classification, in our judgment, simply cannot survive meaningful scrutiny.

More specifically, the following argument was likewise made to the Court below. It is repeated verbatim because what was said there, in support of our thesis, is really hard to improve on:

> Clearly if the State determines that certain prohibited, or proscribed, conduct should be regarded as a criminal offense, this most certainly is the State's prerogative. Indeed, if the State regards certain specific conduct as being felonious, no City can classify such conduct as a misdemeanor. In dealing then with such a situation it seems that clearly the reverse would be true as well. Simply put, where the State, *e.g.*, makes it a felony to carry a concealed weapon, it follows no city can classify the carrying of a weapon as being a misdemeanor. See **City of Cleveland v. Betts, 168 Ohio St. 386 (1958).**
>
> The critical point here being that where (as here) the State makes an offense a "minor misdemeanor," the City cannot make it a more serious offense. What prevents all this from occurring is **Section 3, Article XVIII, of The Ohio Constitution.** There it is said:
>
> > "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce

> within their limits such *local police*, sanitary and other similar regulations, as are *not in conflict with general laws.*" (Emphasis supplied.)

As was also argued below, clearly this Court should act on a forthwith basis to correct this situation. In other words, the sentence imposed herein is illegal and should be corrected.

CONCLUSION

The City ordinance assailed herein as being in conflict with the State statute contains language that is absolutely identical to the State statute. The Opinions rendered by the Court of Appeals and by the Euclid Municipal Court both make and acknowledge this point. Since this Ordinance cannot be reconciled with the State statute, it follows that our petitioner has been denied due process. Obviously then the Petition sought herein should be granted.

Respectfully submitted,

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APPENDIX A

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 79283

CITY OF EUCLID Plaintiff-Appellee -vs- RUFUS TERREL DAVIS Defendant-Appellant	:	ACCELERATED DOCKET JOURNAL ENTRY AND OPINION

Date of Announcement of Decision:	SEPTEMBER 6, 2001
Character of Proceeding:	Criminal appeal from Euclid Municipal Court Case No. 01-CRB-88B
Judgment:	Affirmed
Date of Journalization:	SEP 17 2001
Appearances:	
For Plaintiff-Appellee:	RICHARD A. WIEGAND, ESQ. 585 East 222nd Street Euclid, Ohio 44123
For Defendant-Appellant:	JAMES R. WILLIS, ESQ. Courthouse Square Building Suite 595 310 Lakeside Avenue, N.W. Cleveland, Ohio 44113

JAMES J. SWEENEY, J.:

This appeal is before the Court on the accelerated docket pursuant to App.R. 11.1 and Loc. App.R. 11.1.

Appellant, Rufus Terrel Davis, appeals from his sentence for the possession of marijuana. Mr. Davis claims that the City of Euclid unconstitutionally elevated the offense from a minor misdemeanor under R.C. 2925.11[C][3][a] to a first degree misdemeanor under the municipal ordinance. We find no merit to this contention and affirm.

On December 9, 1993, Mr. Davis was stopped for a traffic violation and was found to be in possession of less than 200 grams of marijuana in violation of Section 513.03(A)(C)(2) of the Codified Ordinances of the City of Euclid.

On January 25, 2001, Mr. Davis was convicted of Drug Abuse in violation of Section 513.03(A)(C)(2), a first degree misdemeanor. Mr. Davis was sentenced to a fine of $300, court costs, one year of active probation, and thirty days in jail which were suspended on the condition that he perform forty hours of community service and undergo a drug assessment.

On January 31, 2001, Mr. Davis filed a Motion to Correct Illegal Sentence arguing that the fine of $300 imposed by the City exceeds the monetary maximum imposed by law. Specifically, Mr. Davis argued that the City illegally elevated the offense from a minor misdemeanor under R.C. 2925.11[C][3][a], which prescribes that a fine may not exceed $100, to a first degree misdemeanor under the municipal ordinance, which prescribes a fine of

$300. On February 13, 2001, Mr. Davis's motion to correct was denied. This appeal timely follows and Mr. Davis raises two assignments of error which will be discussed together:

I. GIVEN R.C. OF OHIO §2925.11(C)(3)(a), THE SENTENCE IMPOSED HEREIN AGAINST THE APPELLANT MUST BE REGARDED AS ILLEGAL.

II. THE APPELLANT WAS DENIED EQUAL PROTECTION OF THE LAW IN THE WAKE OF THE COURT REGARDING WHAT THE STATE PROCLAIMED TO BE A MINOR MISDEMEANOR AS A FIRST DEGREE MISDEMEANOR AND PROSECUTING AND PUNISHING HIM ON THAT BASIS.

Mr. Davis contends that the City of Euclid acted in an unconstitutional manner in classifying the possession of marijuana as a first degree misdemeanor. Specifically, Mr. Davis contends that Section 513.03(A)(C)(2), which contains the identical language of R.C. 2925.11[C][3][a], is unconstitutional because it enhances the statutory penalty for possession of less than 200 grams of marijuana from a minor misdemeanor to a misdemeanor of the first degree.

Mr. Davis challenges this action as a violation of Section 26 of Article II of the Ohio Constitution which requires that:

> All laws, of a general nature, shall have a uniform operation throughout the state; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the general assembly,

except, as otherwise provided in this constitution.

Mr. Davis maintains that R.C. 2925.11[C][3][a] is a general law within the meaning of Art. II, Sec. 26 and cannot be modified by municipal law.

Mr. Davis's argument is without merit. Under Section 3 of Article XVIII of the Ohio Constitution, municipalities are permitted to adopt local regulations for police matters subject only to the limitation that they are not in conflict with general laws. *Niles v. Howard* (1984), 12 Ohio St. 3d 162, 165; *Struthers v. Sokol* (1923), 108 Ohio St. 263.

The Ohio Supreme Court has expressly held that an ordinance is not in conflict with a general law upon the same subject merely because different penalties are provided for the same acts, even though greater penalties are imposed by the municipal ordinance. *Niles* at 165. Furthermore, merely enhancing the classification of an offense from one level misdemeanor to another does not create a conflict.[1] *Id.* See, also, *City of Cleveland Heights v. Wood* (1995), 107 Ohio App.3d 616; *Columbus v. Kemper* (1992), 82 Ohio App.3d 49; *Cleveland v. Barnes* (1984), 17 Ohio App.3d 30; *Shaker Heights v. Fillinger,* (May 5, 1994), Cuyahoga App. No. 65354, unreported.

Accordingly, we find that Section 513.03(A)(C)(2) of the Codified Ordinances of the City of Euclid is not in conflict with R.C. 2925.11[C][3][a]. The increasing penalty and re-classification of the offense from a minor to a first

---

[1] However, if Section 513.03(A)(C)(2) had altered the degree of punishment to a felony rather than a misdemeanor it would have been unconstitutional. *Niles* at 165.

degree misdemeanor are constitutional pursuant to the Supreme Court's ruling in *Niles* and *Struthers*. *Id.* at 3-4. Thus, the City of Euclid ordinance in this case is constitutional and Mr. Davis's assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Euclid Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, P.J., and

ANN DYKE, J., CONCUR.

/s/ James J. Sweeney
JAMES J. SWEENEY
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the

announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this Court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. 112, Section 2(A)(1).

APPENDIX B

IN THE EUCLID MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO

CITY OF EUCLID,	)	CASE NO: 01 CRB 88B
VS.	)	
	)	JUDGE
RUFUS TERREL DAVIS,	)	DEBORAH LEBARRON
Defendant	)	
	)	JOURNAL ENTRY
	)	(Filed Feb. 13, 2001)
	)	

On January 31, 2001 Defendant Davis filed his Motion to Correct Illegal Sentence in the above captioned matter. For the reasons that follow Defendant's Motion is overruled.

On January 25, 2001 the defendant was convicted of Drug Abuse in violation of Euclid Codified Ordinance 513.03(A)(C)(2), a first degree misdemeanor. Defendant was sentenced to a fine of three hundred dollars ($300), court costs, one year of active probation, thirty days in jail, which were suspended on the condition the defendant perform forty hours of community service and undergo a drug assessment. In his motion the defendant maintains that possession of less than 200 grams of marijuana under Ohio Revised Code Section 2925.11(C)(3)(a) is a minor misdemeanor and that the Court's sentence of a fine of $300 is therefore illegal, because a minor misdemeanor is punishable by a fine not to exceed $100.

Defendant's argument fails because it is well-settled that a municipality pursuant to its home rule authority can increase the penalty for an offense. Specifically in

Niles v. Howard, 12 Ohio St. 3d 162, 165 (1984), a case directly on point, the Court held:

> When a municipal ordinance varies in punishment with the state statute such ordinance is not in conflict with the statute when it only imposes a greater penalty.

See also; Cleveland Heights v. Wood, 107 Ohio App.3d 616 (1995)

Based upon the above authority, Defendant's Motion to Correct Illegal Sentence is Overruled.

/s/ Deborah A. LeBarron 2/13/01
Deborah A. LeBarron, Judge

APPENDIX C

The Supreme Court of Ohio

City of Euclid, Appellee,	:	Case No: 01-1950
	:	ENTRY
v.	:	(Filed Jan. 16, 2002)
Rufus Terrel Davis, Appellant.	:	

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by James R. Willis, Esq.

(Cuyahoga County Court of Appeals; No. 79283)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice